IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1765 OF 2004
IN
SUIT NO.704 OF 1993

Mrs. Shanti Gopalkrishnan	..	Plaintiff
v /s.		
Mrs. Vasanta Kumaran and ors	..	Defendants.
AND		
M/s. Worldwide Management Consultants Pvt. Ltd. and ors.	..	Applicants.
AND		
The Court Receiver	..	Respondent.

Mr. P.M. Pramodkumar i/b. Pramodkumar and co. for the plaintiffs.
Mr. S.R. Mishra for defendant no.1.
Mr. Thakkar with R. Pandey for the applicants.
Mr. S. Deshpande for defendant nos.3 and 4.

CORAM: S.U. KAMDAR, J.

DATE : 17TH JANUARY, 2005.

P.C :

1. The present Chamber Summons is taken out inter-alia for a declaration that the order dated 1.9.2004 passed by the Hon’ble Division bench in LPA

no. 368 of 2004 has been complied with and that the Court Receiver, High Court, Bombay is not entitled to terminate the agency of the applicants in pursuance of an earlier order passed by this Court in Chamber Summons no. 231 of 2004 on 12.8.2004. In prayer (c) it has been prayed that the Court Receiver, High Court, Bombay should be directed to continue the agency agreement dated 3.11.2003 executed by and between the applicant and the Court Receiver, High Court in respect of the suit premises. Some of the material facts of the present case are as under :

2. The applicants herein sought to challenge the amount of royalty fixed by the Court Receiver, High Court in pursuance of an agency agreement executed by and between the applicant and the Court Receiver by taking out Chamber Summons no. 502 of 2003. The said Chamber summons was dismissed. An appeal was preferred being appeal no. 783 of 2003. By an order dated 6.10.2003 the division bench while disposing of the said appeal it has been held as under :

"4. In any case, without prejudice to the

aforesaid submissions, Mr. Kapadia states that the Appellants are agreeable to pay 20% of this amount of Rs.78,000/- which comes to Rs.15,600/- per month and it would be payable towards the share of respondent no.1. He further states that the amount will be paid to the Attorneys/Advocate on record of Respondent no.1. The payment will be with effect from the month of July, 2002.

5. We have heard Mr. Diwan for respondent no.1 in reply. He submits that the documents relied upon by the Appellants have been disbelieved earlier by Justice Vyas way back in the year 1993 as also by the learned single judge under the impugned order. However, in the facts of the case, he leaves, it to the court to pass appropriate orders.

6. In these circumstances, we accept the aforesaid suggestion of Mr. Kapadia. He states that all the arrears by this dated i.e. till the end of September, 2003 will be paid by December, 2003. As far as payment means for the month of October, 2003. As far as payment means for the month of October 3003 is concerned the same will be paid separately by 10th November, 2003 and similarly for the months thereafter by 10th of the subsequent month."

3. Pursuant to the said order the appellant paid the royalty amount. However simultaneously the appellant also moved an RAN application for fixation of standard rent being RAN No. 62/SR/2003 and applied for various ad-interim reliefs. By an order dated 23.1.2003 the Small Causes Court fixed an ad-hoc rent

of Rs.3,000/- per month exclusive of electricity charges and outgoings. The applicant also thereafter moved a notice of motion being no. 3176 of 2003 for modification of the order dated 6.10.2003. The said notice of motion is yet not disposed of and the same is pending.

4. The plaintiff herein however challenged the order passed by the Small Causes court dated 21.10.2003 initially by filing an application for vacating and or modification of the order but subsequently they filed a writ petition in this court being Writ Petition no. 5440 of 2004. The said writ petition was admitted by the learned single judge. In so far as interim relief is concerned the learned single judge directed the payment on the basis of royalty fixed by the the Court Receiver, and stayed the order passed by the Small Causes court of fixing interim standard rent.

5. In the mean time the plaintiff herein took out Chamber summons being Chamber summons no. 231 of 2004 for the following two prayers :

"(a) that Court Receiver, High Court, Bombay be directed to terminate the agency Agreement executed on 3rd November, 2003 by the Respondents in favour of the Court Receiver High Court, Bombay and take back actual and physical possession of the premises situated at 143-A Mittal Tower, 14th Floor, Nariman Point, Mumbai-400 020 and open parking space which were allowed to be used as an agent, with a liberty to invite bids from third parties for grant of Agency for use of the said premises as directed by an order dated 17th June, 2002 passed by this Hon'ble Court in Notice of Motion no. 652 of 1993.

(b). that the Respondents be ordered and directed to pay to the plaintiff a sum of Rs.2,34,000/- being the arrears for the period from July, 2002 till September, 2003 and further amount of Rs.15,600/- per month for the period from the month of December, 2003 as ordered and directed by an order dated 6th October, 2003 passed by this Hon'ble Court in appeal no. 783 of 2003 (being Ex.3 to the affidavit in support of the Notice of Motion) till the Respondents hand over to he Court Receiver, vacant, peaceful, actual and physical possession of the premises and the open parking place as described in prayer (a) above."

6. By the order dated 12.8.2004 the learned single judge made the said chamber summons absolute interms of prayer clause (a) and (b). However being conscious of the fact that the dispute between the parties are agitated in rent proceedings the learned single judge made the said order a subject to the order

which may be passed in an appeal being LPA no. 368 of 2004. In para-9 of the said judgement the learned single judge has stated as under :

> "9. The learned counsel appearing on behalf of the Respondents stated that he order dated 29th June, 2004 passed by D.G. Karnik, J. has been challenged in L.P.A. no. 20616 of 2004 filed on 27th July, 2004. This order will naturally be subject to any orders that may be passed by the Division Bench. At present, there is no stay of the order dated 29th June, 2004."

7. An appeal came to be filed against the aforesaid order of the learned single judge dated 12.8.2004 passed in Chamber Summons no. 231 of 2004 being Appeal no. 549 of 2004. However, before the said appeal is heard, an LPA against the order of the learned Single Judge in rent proceedings came up for hearing before the division bench in LPA no. 368 of 2004. By an order dated 1.9.2004 the Division Bench directed the applicant to pay the royalty amount at the rate of Rs.15,600/- as per the order of the Division Bench dated 6.10.2003 passed in Appeal no. 783 of 2004. By the said order it was further directed that the arrears of royalty to be paid within six weeks from the said date and continue to pay the royalty at the

same rate subject to further orders that may be passed in the pending writ petition. By a further order dated 7.10.2004 the time to deposit the arrears of Rs.3,58,800/- was extended till 25.10.2004 as and by way of last chance and it was made clear that no further extension will be granted.

8. It seems that till 25.10.2004 when the Appeal no. 549 of 2004 came up for admission the aforesaid amount was not deposited. Thus the Division Bench dismissed the said Appeal on the ground that the applicant herein has not complied with the order of the Division Bench dated 1.9.2004 as modified by the order dated 7.10.2004 and accordingly dismissed the said appeal. However in the orders passed by the Division Bench dated 1.9.2004 and 7.10.2004 the time to deposit the amount was up to 25.10.2004 and it is admitted before me by both the parties that infact the said order dated 1.9.2004 and 7.10.2004 was complied with on the very same day i.e. 25.10.2004. Subsequently the applicant moved an application for modification of the order passed by the Division Bench and notice of motion was moved being no. 3347 of 2004. The said notice of

motion was heard by the Division Bench and by order dated 24.11.2004 it has been recorded that the deposit as required as per the order of the Division Bench in LPA no. 368 of 2004 has been made by the applicant on 25.10.2004 at 5.30 p.m. and that in the background of the said facts the Division Bench granted liberty to the applicant to apply to the learned single judge for appropriate relief. It has been further provided by the division bench that if such an application is made then the same should be decided by the learned single judge by passing an appropriate order after hearing the parties. The said order dated 24.11.2004 in para-2 and 3 as under :

> "2. At the time we heard the appeal on October 25, 2004, admittedly the appeallant was in arrears in deposit of the royalty. In this view of the matter, we find no justifiable ground for recalling our order dated October 25, 2004.
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> 3. The fact that the deposit has been made by the appellant on October 25, 2004 at 5.30p.m. with the attorney of respondent no.1 is not disputed by the counsel for respondent no.1. In this background, we grant liberty to the appellant to apply to the learned single judge for appropriate relief in the light of the fact that after the order was passed by us on October 25, 2004 the amount of Rs.3,58,000/- came to be deposited. If such an application is made by the appellant, the learned single judge shall pass an appropriate

order after hearing the parties."

9. In pursuance of the said liberty, the present chamber summons has been taken out by the applicant on 2.12.2004 seeking the aforesaid reliefs.

10. In my opinion the order dated 12.8.2004 insofar as granting prayer clause (a) and (b) is concerned the same is clearly made subject to the orders to be passed in the pending LPA being LPA No. 368 of 2004. Thus it is clear from the order of the learned single judge dated 12.8.2004 that if in a pending LPA any order is passed either verying the amount of royalty to be deposited by the applicant or time extended for effecting such deposit then in that event the order in the Chamber Summons would not be effective. It is also an admitted position that by two orders dated 1.9.2004 and 7.10.2004 the time to deposit is extended till 25.10.2004. It is also an admitted position that the amount is actually paid in accordance with the extended period provided in the said two orders. In my view thus the applicant are not in default of any of the terms and conditions of the

agency agreement executed by and between the applicant and the Court Receiver, High Court, Bombay.

11. The learned counsel for the plaintiffs however contend that the order dated 12.8.2004 is to be executed as the same has become final because an appeal preferred therefrom being Appeal no. 549 of 2004 has been dismissed by an order dated 25.10.2004. In view of the dismissal of the said appeal according to the learned counsel for the plaintiff it is an irrelevant factor that whether the appellant has paid the amount within the extended period i.e. by 25.10.2004 or not because according to him there was already a breach of the terms and conditions of the agency agreement before the said orders were passed by non-payment of royalty amount and therefore the agency is liable to be terminated. The learned counsel has further contended that the deposit of amount as on 25.10.2004 is not in pursuance with the order dated 1.9.2004 and 7.10.2004 passed in LPA 368/2004 but is in fact in pursuance of grant of prayer (b) of the Chamber Summons by an order dated 12.8.2004. I am unable to accept the contentions raised by the learned counsel for the plaintiff for

more than one reasons. Firstly the order dated 12.8.2004 was made subject to further orders to be passed in chamber summons indicates that the learned single judge was conscious of the fact that the dispute as to the amount of payment and time of payment is a subject matter of a separate litigation and the orders could be passed in pending LPA which was pending at that point of time. Secondly the order passed on 24.11.2004 by the division bench in Notice of motion no. 3347 of 2004 makes it clear that if the amount is paid on 25.10.2004 then the whole matter is required to be considered on the basis of the application made by the applicant on the ground that infact they are not in breach because they have complied with the orders of payment of the royalty amount as directed by the Division Bench in their earlier order dated 6.10.2003 in Appeal no. 783 of 2004. Thus the default stood condoned by virtue of the order dated 1.9.2004 and 7.10.2004 passed in Appeal no. 368 of 2004 by extending the time to deposit of arrears of amount till 25.10.2004. In the light of the aforesaid facts, the present Chamber Summons is required to be made absolute. I accordingly make the Chamber Summons

absolute in terms of prayer clause (a), (b) and (c).

SD/-

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